

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-221584.2

DATE: March 13, 1986

MATTER OF: Sealtech, Inc.--Request for Reconsideration

DIGEST:

GAO dismisses a protest against a contracting officer's nonresponsibility determination with respect to a small business concern where the matter has been referred to the Small Business Administrative (SBA) for possible issuance of a certificate of competency (COC) and SBA has not yet determined whether to issue a COC.

Sealtech, Inc. (Sealtech), requests reconsideration of our January 22, 1986, dismissal of its protest against any award under invitation for bids (IFB) No. DLA100-85-B-1205, issued by the Defense Logistics Agency (DLA) for the supply of goggles.

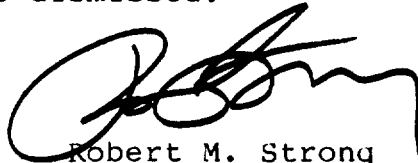
In its initial protest, Sealtech alleged that DLA had improperly found the firm to be nonresponsive on the basis of an inadequate preaward survey. Our Office was then advised by DLA that the question of the responsibility of Sealtech--a small business concern--had been referred to the Small Business Administration (SBA), which had subsequently declined to issue a certificate of competency (COC). Since SBA has conclusive authority under 15 U.S.C. § 637(b)(7) (1982) to determine the responsibility of small business concerns by issuing or refusing to issue a COC, our Bid Protest Regulations, 4 C.F.R. part 21 (1985), provide that, with certain exceptions, we will not review the denial of a COC. 4 C.F.R. § 21.3(f)(3). See Consolidated Marketing Network, Inc., B-218104, Feb. 12, 1985, 85-1 C.P.D. 190. GAO will not review an SBA decision in the absence of a showing that it stemmed from fraud or bad faith or of an allegation that SBA failed to follow its own regulations or did not consider material information. Sealtech had not made such a showing and we therefore dismissed its protest.

Sealtech, however, alleges in its request for reconsideration--and DLA now confirms--that SBA has not yet decided whether to issue a COC.

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Nevertheless, Sealtech's protest is subject to dismissal. SBA has not yet made its COC determination and it may decide to issue a COC, in which case there would be no need for a decision by our Office. If SBA declines to issue a COC, then Sealtech may protest to GAO and we will examine its protest to determine whether the circumstances permit our review of SBA's determination. The W.H. Smith Hardware Co., B-219327 et al., July 24, 1985, 85-2 C.P.D. ¶ 82; see Apollo Bedding, Inc., B-218505.2, May 17, 1985, 85-1 C.P.D. ¶ 570.

The protest is dismissed.



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